

STATINTL

MEMORANDUM FOR: [REDACTED]

SUBJECT : Public Buildings Amendments of 1972

1. You have asked if the Headquarters Building space must be considered subject to a user charge as may be fixed by the Administrator of General Services pursuant to the Public Buildings Amendments of 1972. For the reasons set out below, it is my opinion that that space is not subject to assessment by the Administrator.

2. Section 4 of the Public Buildings Amendments of 1972 (P. L. 92-313) amends the Federal Property and Administrative Services Act of 1949 by adding a new subsection which provides:

"(j) The Administrator is authorized and directed to charge anyone furnished services, space, quarters, maintenance, repair, or other facilities (hereinafter referred to as space and services), at rates to be determined by the Administrator from time to time and provided for in regulations issued by him. Such rates and charges shall approximate commercial charges for comparable space and services..." (40 USCA 490 (j)).

3. At the outset, it may be noted that this provision is not specifically made applicable to buildings "under the (Administrator's) exclusive jurisdiction and control and...custody" (cf 40 USCA 285), or, to "any building owned by the United States" (cf 40 USCA 490 (b)), or to "federally owned and leased space...for which the Administrator is responsible" (cf E. O. 11512 at 40 USCA 490 fnote). Its legislative history, however, shows that it is to be made applicable to GSA operated buildings generally. In this connection, see House Report 92-18, pages 17 and 18, and also 118 Cong. Rec. 3274.

4. The Headquarters Building is a GSA-operated building. A reading of the 1959 concordat, as represented by the exchange of correspondence between the Administrator of General Services and the Director of Central Intelligence, wherein

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it was understood that GSA would perform functions incident to the operation, maintenance, and protection of the building using its appropriation should make that obvious. The legal basis for such an arrangement is 40 USCA 490 (b).

5. In terms of subsection (j), it can be seen that the charges authorized are composed of two elements, one of which is related to Administrator-furnished space and the other to Administrator-furnished services. As regards the charge to be made for Administrator-furnished space, the Administrator's testimony before the Subcommittee on Public Buildings and Grounds on September 22, 1971, is most revealing. By way of demonstrating the merits of his proposal, he stated:

"(This bill) would require Government departments and agencies to pay user charges or 'rent' for the space they occupy in GSA operated buildings, rather than get it free of charge as at present.

\* \* \* \* \*

"At present, GSA assigns more than 200 million square feet of office, warehouse, and other Government space and provides related real property service to more than 820,000 Federal employees. Funds necessary to pay for this space and these services are appropriated almost exclusively to GSA. In fiscal year 1971, our Public Buildings Service obligated almost \$660,000,000. All of this \$660,000,000 was budgeted to GSA, even though it was spent to support hundreds of Federal programs in virtually every Government department and agency.

"Budgeting the cost of furnishing all of this space to GSA is both illogical and inconsistent with the program budgeting concept that prevails elsewhere throughout the Government.

"We believe (this bill) will also result in substantial economies and efficiencies in the use of space in Government buildings. Agencies and departments that do not pay for space have no incentive to conserve space. As a matter of fact, when space is provided free, agencies and departments are much more likely to request more space than they really need" (House Report 92-18, pages 18 and 19).

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6. Thus, it is quite apparent that the target of subsection (j) was to be those agencies who were obtaining Administrator-furnished space "free of charge." Stated otherwise, its purpose is to forestall certain agencies from "free loading" on GSA's appropriation. However, the Headquarters Building space was not obtained in the manner of which GSA complained.

7. The construction of the Headquarters Building was authorized by the Act of July 15, 1955 (P. L. 84-161), which, in Section 401 of Title IV thereof, provided:

"The Director of Central Intelligence is authorized to provide for a headquarters installation for the Central Intelligence Agency...at a cost of not to exceed \$54,500,000..."

8. The initial appropriation for the Headquarters Building was contained in the Supplemental Appropriation Act of 1956 (P. L. 84-219) of which Chapter III provided:

"Central Intelligence Agency. Construction. For the preparation of detail plans and specifications of a Central Intelligence Agency headquarters installation...as authorized by Title IV of the Act of July 15, 1955... \$5,500,000."

9. The balance of the sums required for the construction was subsequently appropriated by enactment of the Supplemental Appropriation Act of 1957 (P. L. 84-814). This read in part:

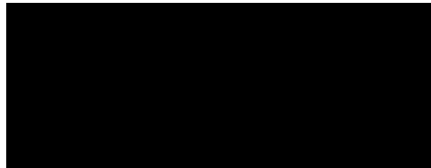
"Central Intelligence Agency. Construction. For the preparation of detail plans and specifications and the construction of the Central Intelligence Agency headquarters installation...as authorized by Title IV of the Act of July 15, 1955...\$49,000,000" (Chapter III).

10. The legislative history accompanying these statutes shows that the Agency space requirements for its Headquarters installation, together with the dollar amounts required to satisfy them, were fully justified in the hearings conducted by the cognizant House and Senate subcommittees. The statutes themselves are clear and unequivocal.

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They show that the Congress conferred construction authority directly upon the Director of Central Intelligence and appropriated funds necessary to implement that authority directly to the Agency. It follows therefore that the Headquarters building space can not be considered to be Administrator-furnished. For GSA to maintain now that the Agency's continued occupancy is dependent upon its again seeking funds from Congress to make expenditures for a need already satisfied by a prior appropriation would, to quote the former Administrator, be "both illogical and inconsistent with the program budgeting concept..." (House Report 92-18 at page 19).

11. Accordingly, it is my opinion that the Headquarters space is not to be considered subject to the user charge authorized by Subsection (j). Of course, this is not to say that the Headquarters Building is not subject to an assessment for charges insofar as they relate to Administrator-furnished services. STATINTL



Assistant General Counsel